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File No. S Notices /47

Legal DEPARTMENT

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Subject:—

Papers regarding Notices of-

intended Suits

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Office of the R. L. A.

Mr. Rajaram Hari Teli alias Lute has given a notice under section 80 of the Civil Procedure Code threatening to file a suit against Government for a declaration that his be is not liable to pay the water rate of Rs. 488-8-0 levied by the Executive Engineer in respect of S. No. 251 of Rahata and for consequential injection. Mr. Lute contends that he had irrigated his S. No. 251 with the water of the well in S. No. 251 belonging to Mr. Grime and not by making unauthorised uses of canal water from the adjacent block belonging to Mr. Borwale and that therefore the charge of water rate is illegal. The facts are as under:-

A sugar cane crop covering an area of 4 acres and 16 gunthas in S.No. 251 of Rahata belonging to Mr. Lute was inspected by the Sub-Divisional Officer in May 1946. There was no well in that land and the occupant had not applied for supply of canal water for his sugar cane block. The Executive Engineer who was also shown the sugar cane crop was satisfied that Mr. Lute must have irrigated his crop by unauthorisedly taking supply of canal water from the adjacent block of Mr. Borwale. Accordingly panchanamas were drawn up but it is said that the panchas refuse to sign the same and thereupon the Executive Engineer "Sanctioned" them after "Satisfying" as to their correctness. The P.W.D. is of opinion that in the absence of a properly constructed well in S.No. 251 or 250, Mr. Lute could not have irrigated his crop except by making unauthorised use of canal water from the adjacent block. The R.L.A. is requested to advise whether this view is correct and whether the suit, if filed, would be defencible.

The question involved in the threatened suit is one of fact only viz. whether the sugar cane crop was irrigated by means of well water from the adjacent S.No. 250 as alleged by the plaintiff or whether it was irrigated by unauthorisedly taking canal water as alleged by Government. The legal position is perfectly clear. If the supply of canal water is obtained without permission or in an unauthorised manner, the offender is liable to charged water rate under Rule 23 of the Bombay Canal Rules of 1934. The question therefore depend upon the evidence which the parties will produce. If the plaintiff leads evidence to prove that he obtained water from the adjacent land of Mr. Grime and did not use canal water, Govern-

ment will have to meet tat case and show that it is false by tendering evidence to prove that canal water was in fact taken in an unauthorised manner from the adjacent block of Mr. Borewala Since the Panchas refused to sign the panchanamas they have no value and cannot be tendered in evidence. The case will therefore depend upon oral evidence which th e parties will be able to lead; and upon circumstantial evidence which the P.W.D. can produce to show that the crop could not have been watered except by canal water. The P.W.D. must consider the sufficiency of all such evidence before deciding to defend the suit.

Remembrancer of Legal Affairs.

U.O. to P.W.D. No. 9315. Dated the 19th September, 1947.

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G.G.